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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

5577-222

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on October 24, 2005

Signature

Typed or printed name Erin A. Campion

Application Number

09/693,268

Filed

October 20, 2000

First Named Inventor

Mike Edward Baskey

Art Unit

2155

Examiner

Nguyen, Thu Ha T

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
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October 24, 2005

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

 *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**RESPONSE UNDER 37 C.F.R. 1.116
EXPEDITED PROCEDURE EXAMINING GROUP 2155**

Attorney's Docket No. 5577-222/RSW920000061US2

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Baskey *et al.*

Serial No.: 09/693,268

Filed: October 20, 2000

For: METHODS, SYSTEMS AND COMPUTER PROGRAM PRODUCTS FOR SERVER
BASED TYPE OF SERVICE CLASSIFICATION OF A COMMUNICATION
REQUEST

Confirmation No.: 7474

Group No.: 2155

Examiner: T. Nguyen

Date: October 24, 2005

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22313-1450 on October 24, 2005.

Erin A. Campion

**REASONS IN SUPPORT OF APPLICANTS' PRE-APPEAL
BRIEF REQUEST FOR REVIEW**

Sir:

This document is submitted in support of the Pre-Appeal Brief Request for Review filed concurrently with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG of July 12, 2005 for the New Appeal Brief Conference Pilot Program.

No fee or extension of time is believed due for this request. However, if any fee or extension of time for this request is required, Applicants request that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee, which may be required, or credit any refund, to our Deposit Account No. 09-0461.

REMARKS

Applicants hereby request a Pre-Appeal Brief Review (hereinafter "Request") of the claims finally rejected in the Final Office Action mailed August 23, 2005. The Request is provided herewith in accordance with the rules set out in the OG dated July 12, 2005.

Claims 1-43 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United

States Patent No. 6,594,699 to Sahai *et al.* (hereinafter "Sahai") in view of United States Patent No. 6,697,849 to Carlson (hereinafter "Carlson"). *See* Final Office Action, page 5. Applicants respectfully submit many of the recitations of the pending claims are not met by the cited combinations for at least the reasons discussed herein and in Applicants' previously filed Amendment of December 13, 2004. Therefore, Applicants respectfully request review of the present application by an appeal conference prior to the filing of an appeal brief. In the interest of brevity and without waiving the right to argue additional grounds should this Petition be denied, Applicants will only discuss the recitations of the independent Claim 1, 20, 22 and 33.

Claim 1 recites:

A method for type of service classification of a communication request for an application executing on a server, the method comprising the steps of:
providing an application plug-in associated with the application in an operating system kernel of the server;

wherein the application plug-in performs the following steps:
receiving the communication request;
obtaining application level information from the received communication request;
assigning a type of service classification to the received communication request based on the obtained application level information; and
providing the assigned type of service classification information for the communication request to a process executing on the server for processing communications from the server responsive to the communication request.

Claims 20 and 22 and Claim 33 contain corresponding system and computer program product recitations, respectively. Applicants submit that at least the highlighted portions of Claim 1 are neither disclosed nor suggested by the cited combination, therefore, the Final Office Action has failed to establish a prima facie case of obviousness for at least these reasons.

The Final Office Action states that Sahai teaches all the recitations of Claim 1, except the step of providing an application plug-in associated with the application in an operating system kernel of the server. *See* Final Office Action, page 6. Applicants respectfully disagree. Sahai discusses an application running on a server that is configured to format and adapt media data based on client capabilities and/or user preferences, *i.e.*, Sahai discusses the details of an application at the application level. In particular, Sahai describes a system in which a user clicks on a hyperlink presented on a browser, for example, Netscape, to provide a request and, in

response to the request, a set of capabilities of the client 12 are sent to the server 10. User preferences may also be obtained by the server 12 and the server 12 may process the request by formatting the data and adapting it using the provided client capabilities and/or user preferences. *See Sahai, column 2, line 55 to column 3, line 11 and column 4, lines 31-39.* Accordingly, Sahai discusses an application running on a server configured to receive data from the client and format/adapt the data based on client capabilities and/or user preferences.

In contrast, embodiments of the present invention provide an application plug-in associated with an application in an operating system kernel of the server. In other words, the plug-in is part of the kernel of the operating system, *i.e.* the core of the operating system that handles resource allocation, hardware interfaces, and the like, not part the application level modules. A plug-in, by definition, is a module that can be added to a computer application that may provide added functionality to the application. In particular, as stated in the specification:

The TCP/IP kernel 355, as shown in **Figure 3**, communicates with the communication network 325 through a router/bridge device 320. Where the router/bridge device 320 is a router, it typically routes communications packets based on level 4 information, such as destination IP address. Where the router/bridge device 320 is a bridge, it may process communications within a network node using level 3 information, such as machine identification number, rather than level 4 IP address information.

See Specification, page 14, line 25 to page 15, line 2 and Figure 3. In other words, the TCP/IP kernel 355 of the operating system does not typically obtain (or see) application level data, for example, TCP/IP level 5 or above data, from a received communication request. Thus, according to some embodiments of the present invention, the application plug-in process 365 provides the added functionality of obtaining application level information at the TCP/IP kernel 355 from the received communication request and assigning a type of service classification to the received communication request based on the obtained application level information. *See Specification, page 15, line 23 to page 16, line 14.* The type of service classification may be provided to the communication process 360 so as to allow the communication process 360 to process outgoing communications from the server based on the type of service classification assigned.

Nothing in Sahai discloses or suggests an application plug-in at the kernel of the operating system that adds the capability of obtaining application level data to the functionality

of the operating system. Furthermore, nothing in Sahai discloses or suggests obtaining application level information from the received communication request at the kernel of the operating system, assigning a type of service classification to the received communication request based on the obtained application level information or providing the assigned type of service classification information for the communication request to a process executing on the server for processing communications from the server responsive to the communication request as recited in Claim 1. Accordingly, Sahai fails to disclose or suggest the recitations of Claim 1 for at least the reasons discussed above.

As discussed above, the Final Office Action admits that Sahai fails to explicitly teach providing an application plug-in as recited in the claims of the present invention. *See* Final Office Action, page 6. However, the Final Office Action states that Carlson provides the missing teachings. *See* Final Office Action, page 6 (citing Figures 4-6, col. 7, line 60 to col. 8, lines 1-32). Applicants respectfully disagree.

Although Carlson discusses a conventional plug-in 242, the plug-in enables the web servers to communicate with other systems via standard HTTP or HTTPS protocols. *See* Carlson, column 10, lines 2-19 and corresponding Figure 4. Conventional plug-ins typically are included as part of an application and communicate application level information, for example, HTTP or HTTPS. It does not appear that any portion of Carlson discusses where the plug-in 242 is located in the web server 240. Accordingly, nothing in Carlson appears to disclose or suggest an application plug-in located in an operating system kernel of the server as recited in Claim 1. In particular, nothing in Carlson discloses or suggests an application plug-in at the kernel of the operating system that adds the capability of obtaining application level data to the functionality of the operating system that typically only receives level 3 or level 4 information as recited in Claim 1 of the present invention. Furthermore, nothing in Carlson discloses or suggests obtaining application level information from the received communication request at the kernel of the operating system, assigning a type of service classification to the received communication request based on the obtained application level information or providing the assigned type of service classification information for the communication request to a process executing on the server for processing communications from the server responsive to the communication request

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as recited in Claim 1. Accordingly, Carlson fails to disclose or suggest the recitations of Claim 1 for at least the reasons discussed above.

Accordingly, none of the cited references either alone or in combination disclose or suggest many of the recitations of Claim 1 set out above. Furthermore, there is no motivation or suggestion to combine the cited references as suggested in the Office Action as discussed in Applicants' response to the 9/14/04 Office Action. However, in the interest of brevity, Applicants will not repeat those arguments herein, but incorporate them by reference as if set forth in their entirety. Consequently, Applicants submit that the Final Office Action has not established a *prima facie* basis for the obviousness of Claim 1 over Sahai and Carlson.

Accordingly, for at least the reasons discussed above, many of the recitations of Independent Claims 1, 20, 22 and 33 are not met by the cited combination. Therefore, Applicants respectfully request that the present application be reviewed and reversed by the appeal conference prior to the filing of an appeal brief.

Respectfully submitted,



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